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#5/a
B.D.
1-23-04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of: Mr. Jose LOPEZ

Application Number: 09/883,170

Art Unit 2644

Filed: June 18, 2001

In Re: Office Action from Examiner Brian Pendleton dated October 9, 2003.

Filed by Right Fax on Friday, January 9, 2004 Right Fax number: 703-872-9306

REPLY AND AMENDMENT

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In compliance with the above office action, please consider the reply and amendment as shown below.
The response is organized into three sections following this introduction:

1. Section 1 is an argument and request for reconsideration of §102 objections raised in the Office Action of 10/90/2003.
2. Section 2 contains amended and new claims. Claim 7 is amended per the above-mentioned Office Action, Claims 1-7 are amended to improve the language, and Claims 8-16 are new.
3. Section 3 contains remarks and a suggestion for a possible interview between examiner and Applicant.

There are no amendments offered to the drawings or written specification at this time.

As required by current USPTO procedure, each section begins on a new page.

Submitted by Michael A. Shippey, Registration no. 45,588

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Section 1. Reply to the Office re §102 objections

Applicant respectfully requests the reconsideration of §102 objections raised in the Office Action, based on the following considerations. Prior art of significant concern here as reported in the above Office Action is: Walters, et.al., US 6,453, 281.

Examiner suggests that claim 1 and 2 are clearly anticipated by the Walters '281 patent. Applicant proposes that this suggestion is not correct on the following counts.

- ✓ 1. The Walter's '281 patent is an audio database device while Applicant's invention is specially designed for studying, and for rapid memorization of information.
2. The Walter's '281 patent stores the audio recordings in a hierarchical memory structure and uses embedded coding to organize the audio recordings to a corresponding icon. Applicant's invention is not meant to organize the audio recordings into such a hierarchical ordering. The audio recording files stays in the same file and linear order sequence. In Applicant's invention the preservation of the linear order sequence of the audio files is preferable for memorization.
- ✓ 3. The Walter's '281 patent uses embedded coding within the audio recording to reorganize the file to a corresponding icon. Applicant's invention uses embedded coding to affect the operation of an audio file. Based on its electronic flag status as controlled by the user certain audio files will not function normally -- it cannot be played and will be skipped upon fast forward and rewind.
4. The Walter's '281 patent uses embedded coding to organize the file into a hierarchical structure for organization. Applicant's invention is uses embedded coding to affect the frequency of play operation of each audio file. Each audio file will have an electronic grading status so that it will play more often or less often based on the success of the user in trying to memorize the file.
- ✓ 5. The Walter's '281 patent is meant to organize the files for easy retrieval. Because of its study function, Applicant's invention functions in direct opposition to that. Certain audio files cannot

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be retrieved (it cannot be played and will be skipped upon fast forward and rewind) because these are audio files that have been memorized by the user and he would not want to hear them again.

- ✓6. The Walter's '281 patent uses icons to organize the audio files. There are no such icons in Applicant's invention for organization purposes. Each audio file will only have a sequence number and a wording content display of the audio file.
- ✓7. The Walter's '281 patent organizes the audio files into folders without any coding that tracks as to when it should automatically retrieve itself and play for the studying user. The Applicant's invention has a grading system coded in the file so that certain files will automatically play or be skipped more or less often based on the progression of the user through the audio files and the grade setting chosen by the user. This is an advantage because during memorization certain audio files should play more often than others and this tracking is done automatically by the Applicant's invention.

The major common point in many of these counts is that the Walter's '281 invention is inherently built on a hierarchical database structure. Indeed, the word 'hierarchical' appears 52 times in the Walter's '281 patent. Over half of these appearances are in the claims, specifically, in claims 1, 4, 8, and 14. Figures 21-25 in Walter's '281 are drawn to the hierarchy in the invention. There can be no doubt of the essential nature of the hierarchical database structure to the Walter's '281 patent disclosure and claims.

In contrast, the word 'hierarchical' appears nowhere in the instant application disclosure. As clearly demonstrated in Figure 5 therein, Applicant's application is drawn to a linear, not a hierarchical organization. In fact, Applicant specifically does not refer to his invention as utilizing a 'database', in part because of the lack of this hierarchical structure.

Applicant's invention stresses the need to rehearse and repeat certain question and answer sets based on memorization need, not on categorization. In that sense, Applicant's invention is more of a true memorization aid than Walter's '281, or indeed any of the prior art found.

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As a result, the two inventions operate differently. Walter's '281 allows the user to categorize and organize large amounts of information. Applicant's invention is directed more toward rapid retrieval and replay of a limited amount of information on the basis of need for improved memorization. A debate as to the advantages of each invention over the other may be of value to a consumer, but clearly has no bearing on patentability.

In light of the above arguments, applicant respectfully requests the Examiner to reconsider his rejections of the claims based on §102 objections.

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1/9/2004